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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF SEATTLE TO
GERALD R. KINGEN

RUTH MOORE,

Appellant,

v.

CITY OF SEATTLE and
GERALD R. KINGEN,

Respondents.

SHB No. 204

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit came on regularly for hearing before Board members Chris Smith, Gerald D. Probst, James Williams, Rod Kerslake and Walt Woodward (presiding), on April 14 and 15, 1976 in Seattle, Washington. Appellant Ruth Moore appeared pro se; respondent City of Seattle was represented by Assistant Corporation Counsel Charles D. Brown; respondent permittee Gerald R. Kingen was represented by J. Richard Aramburu.

1 Having heard the testimony, having examined the exhibits, and
2 having read the parties pre-hearing and post-hearing memoranda, the
3 Shorelines Hearings Board makes the following

4 FINDINGS OF FACT

5 I.

6 The Red Robin Tavern, the subject of this request for review,
7 has existed as a tavern and restaurant in its present location
8 approximately thirty-six years. The site, identified as 3272 Fuhrman
9 Avenue East, is located immediately east of the University Bridge, at
10 the corner of Fuhrman Avenue East and Eastlake Avenue East.

11 While within two hundred feet of the Washington Ship Canal, the
12 tavern is separated from the water by Portage Bay Place East and both
13 private waterfront residences and floating homes.

14 II.

15 Shortly after purchasing the subject property in 1970, the
16 permittee, Mr. Kingen, expanded the tavern to its present size,
17 approximately 3007 square feet. The facility now consists of
18 1) a one-story building, approximately 42' x 58', 2) a partially
19 enclosed deck, facing the water, approximately 16' x 58', and 3) a
20 concrete patio constructed within the past year and fronting a blank
21 apartment building wall, approximately 21' x 42'. The 3007 square
22 footage includes only the building and the deck.

23 III.

24 Mr. Kingen applied for a building permit on April 4, 1975 and a
25 permit to completely enclose the deck was granted on May 5, 1975, with
26 the construction cost estimated at \$26,800. A "Correction Sheet"

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1 dated April 28, 1975, conditioned the building permit by requiring site
2 plantings and catch basin improvements to mitigate environmental
3 concerns. On the plans submitted by Mr. Kingen, the Building
4 Department official noted "SMA not required," referring to the need
5 to seek a shoreline development permit. Mr. Kingen commenced
6 construction under the building permit until a stop work order issued
7 for failure to obtain a shoreline development permit.

8 On June 2, 1975, respondent permittee Gerald R. Kingen applied
9 for a substantial development permit to 1) change the materials used
10 on the existing roof and walls of the tavern's outside deck from wood
11 and glass to aluminum and glass; 2) continue such existing deck roof to
12 enclose the remaining open area, an extension of approximately twenty
13 feet; 3) re-equip and remodel the interior; 4) change the exterior
14 siding and 5) add additional landscaping to the parking areas and
15 surrounding building.

16 A declaration of no significant impact was filed on August 20,
17 1975 and a shoreline development permit was issued to Mr. Kingen on
18 September 18, 1975 for the alterations requested in his application.
19 The following permit conditions were imposed:

- 20 1) Seating capacity limited to 120;
- 21 2) Outdoor dining prohibited after 10:00 p.m.;
- 22 3) The parking lot to be painted, marking regulation
23 parking stalls, and
- 24 4) An employee parking area for six or more stalls
to be provided west of Eastlake Avenue.

25 The permit was amended effective October 30, 1975, eliminating
26 condition number two and rephrasing condition number four to permit

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1 the provision of the six employee parking spaces on the permittee's
2 property adjacent to Portage Bay Place. Appellant Ruth Moore timely
3 appealed the issuance of the substantial development permit on
4 October 20, 1975. During the formal hearing on the merits in this
5 matter, respondent permittee Gerald Kingen was granted leave to cross-
6 appeal the permit condition limiting the seating capacity to 120.

7 IV.

8 The Board finds, through review of pleadings and testimony
9 offered at hearing, that appellant Ruth Moore has no objection to the
10 specifics of the project as applied for by the permittee. Rather
11 appellant contends that, with regard to the permit conditions imposed by
12 the City, 1) there will be an adverse impact from the location of the
13 employee parking spaces under the permit as amended, 2) permit condition
14 two should have been retained, 3) there is inadequate space on the
15 permittee's property to provide the required number of patron stalls
16 per zoning ordinance and thus the draft master program, 4) the
17 permittee failed to follow proper procedures in applying for the
18 substantial development permit, 5) an EIS should have been required,
19 and 6) the permit should provide the public access to the shoreline.

20 V.

21 Draft Four of Seattle's Master Program was in effect at the time
22 the permit was issued in this matter. Under Draft Four, the Red
23 Robin is a permitted use within its "urban stable" designation.
24 Section 5.6.05 of Draft Four, "Granting of permit: Criteria,"
25 provides that a permit shall be granted only when the proposed
26 development is consistent with . . . "b) the requirement of the

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1 Zoning Ordinance" Seattle's Zoning Ordinance 86300, Section
2 23.3, applicable to the instant premises, requires "1 (parking space)
3 for each 200 square feet of gross floor area when in excess of 2000
4 square feet." Thus, the Red Robin Tavern must provide fifteen off-
5 street parking spaces.

6 The Environmental Impact Assessment Supplement notes, p.2,
7 that the applicant "maintains an existing parking lot adjacent to
8 the tavern containing 15 spaces." Additionally, the applicant's
9 parking plan for the fifteen spaces was approved by Seattle's
10 Engineering Department. Testimony at hearing was not persuasive that
11 inadequate space existed to permit lining of these spaces as required
12 under Permit Condition No. 3.

13 VI.

14 The six employee parking stalls to be provided adjacent to Portage
15 Bay Place East include three presently rented stalls and an area
16 for an additional three stalls which would possibly need to be
17 regraded prior to use. The Board did not find, on the basis of the
18 testimony presented, that six regulation stalls could not be provided
19 in the space allocated for employee parking. It was not persuaded that
20 any necessary regrading would exacerbate erosion of the bankside or
21 the shoreline.

22 VII.

23 The Board found that the environmental impact of the demand
24 for parking spaces must be considered independently of the
25 requirements for the provision of spaces under the Zoning Code.

26 The Red Robin Tavern currently has a capacity of: seventy-eight

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1 seats within the building, sixty-four seats on the deck, and a po-
2 tential sixty-seven seats on the newly constructed patio. With an
3 adjusted interior capacity resulting from the proposed remodeling, the
4 tavern would have a potential seating capacity of 196 seats.

5 For the past six years the Building Department's Occupancy
6 Rating, responsive to health and fire considerations, has been 129,
7 which figure includes both patrons and employees.

8 The permit condition limiting seating capacity of the Red
9 Robin to 120 was intended to apply to and restrict seating within
10 the building, on the deck, and on the patio. The basis for this reduction
11 was the mitigation of the demand for parking generated by patronage
12 of the Red Robin.

13 It was found that the commercial concerns and the residential
14 neighborhood surrounding the Red Robin Tavern do suffer from inadequate
15 on-street and off-street parking and that the on-site parking provided
16 by the Red Robin would be inadequate to accommodate its potential
17 patrons.

18 From these Findings, the Shorelines Hearings Board comes to these

19 CONCLUSIONS OF LAW

20 I.

21 With regard to appellant's contention alleging procedural
22 irregularity, the Board concludes that respondent permittee relied
23 in good faith on the initial assurance by a city official that no
24 substantial development permit was required, and that no willful
25 circumvention of the Shoreline Management Act occurred. Further,
26 despite a seeming discrepancy in document dates, the finding of no

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